IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 551 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CENTRAL BUREAU OF INVESTIGATION - Applicant(s)
Versus
DHARMENDRAKUMAR MISHRA EX-DY. CIT,CENTRAL-I CIRCLE-I(V) & 1 - Respondent(s)

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Appearance :
MR YN RAVANI for Applicant(s) : 1,
MR.K.J. SHETHNA for Respondent(s) : 1,
MR.H.L. JANI, ADDL.PUBLIC PROSECUTOR for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 17/11/2006

ORAL JUDGMENT

There being number of mistakes/ typographical errors in a type-written copy which the learned

advocate has certified to be 'a true copy', the learned advocate sought permission to produce that page duly retyped. Permission is granted.

2. Central Bureau of Investigation (“CBI” for brevity) through its Superintendent of Police, Section 10, Gandhinagar, is before this Court challenging the order passed by Special Judge, Court No.4 (Special) for CBI Case at Navrangpura, Ahmedabad dated 5th April 2006. The learned Judge after taking into consideration all the aspects of the matter, passed the following order:

> “This application is allowed. The prosecution is directed to examine the sanctioning authority for justification of the objection of the accused regarding non application of mind while issuance of sanction order.”

3. Mr.Ravani has produced a copy of letter dated 8th December 2005 which is with regard to RC 10(A)/ 2002-GNR. The contents of the letter are as under:

> “Please refer to your Office letter CR/ III/ 10(A)/2002/GNR/ 10579 dated 29th November

2005 on the subject mentioned above.

In this regard a copy of the comments DLA/ CBI/ ACB of Mumbai Region of JD (WZ) vide Note Sheet DR 71/N to 75/N are enclosed herewith for compliance."

4. The present Revision Application is filed challenging the direction by which the learned Special Judge directed the prosecution to examine the sanctioning authority. The learned Judge has done this in view of the clear direction given by the Division Bench of this Court in the matter of **State of Gujarat Vs. Shyam Santdas Ambvani**, reported in 1980 XXI G.L.R. 877. Para 13 of the Division Bench judgement reads as under:

"Before we part with this judgement, we deem it necessary to draw pointed attention of all the Special Judges in the State to the situation which has arisen in the instant case, where after over two years, the case finally fails on a technical ground. Previous **sanction by the competent authority is a condition precedent to the court's taking cognizance of the offence as required by sec.6 of the Act**. If this aspect was borne in mind, valuable public time and

> labour spent in recording evidence and in hearing the arguments and deciding other issues could have been avoided. It would be expedient in such cases, **when there is a serious challenge to the order according sanction, that the learned Special Judge tries and decides that issue first** without recording evidence on other issues so that much of duplication, which would be the probable result from the proceedings being quashed on the ground of want of valid sanction, could be avoided." (emphasis supplied)

5. The learned Special Judge has recorded in para 9, the relevant part of which reads as under:

> " .. .. it is clear that in the present case also, the question of sanction itself is seriously challenged by the accused and at the same time, this court is also conscious of the fact that wastage of valuable public time and labour spent in recording evidence and in hearing arguments and deciding other issues, should be avoided."

This Court is surprised when an agency like CBI comes forward to challenge an order passed by the learned Special Judge, which is passed on a judgement of this

Court wihtout challenging the order of this Court in a higher forum. In this very case earlier order dated 15th September 2005 was challenged by filing Criminal Revision Application No.30 of 2006, which was disposed of by this Court on 23rd January 2006 by observing in paras 3 and 4 as under:

> "3. Without entering into the merits or into controversy, as to whether this Criminal Revision Application is maintainable as has been filed against an interlocutory order, at this stage, when only files are called for, this Court is not inclined to interfere, though attention is also drawn of this Court to a decision of the Division Bench of this Court, in the matter of, **STATE OF GUJARAT v. SHYAM SANTDAS AMBVANI**, as reported in **1980 GLR 877** particularly para-13, wherein this Court sounded note of caution about the examination of a witness, in those circumstances, as envisaged by para-13 of the said decision.
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> 4. However, as aforesaid when further orders are still to be passed by the trial Court and undoubtedly, the whole matter will be decided according to law, at this stage this Revision Application must fail."

6. The CBI has chosen to challenge the subsequent order also, in this Revision Application.

7. This Court is of the opinion that it is only on account of egoistic approach of the officials of CBI that they have decided to challenge the order of the learned Special Judge for which the official has not to spend anything from his pocket. It is at the public cost that the official challenges every order which is passed by the learned Special Judge. Mr.Ravani, learned advocate for the petitioner invited attention of the Court to section 19 of the Prevention of Corruption Act, 1988 (49 of 1988) (hereafter referred to as ”the Act”). The learned advocate without reading the opening part of section 19, invited attention of the Court to clause (b) of subsection (3) of section 19 of the Act. This was without any reference to its applicability to the facts of the present case. In fact, this Court is of the opinion that the learned advocate deliberately tried to avoid reading the opening part of section 19 of the Act, which is material and which is the base for passing the order under challenge. Section 19 of

the Act deals with “Previous sanction necessary for prosecution”.

Subsection (1) of section 19 of the Act starts with the following words:

> “(1) No court shall take cognizance of an offence punishable under sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction.”

Subsection (3) of section 19 of the Act reads as under:

> “(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), --”

Meaning thereby that the provisions of the Act are given an upper hand over the provisions contained in the Code of Criminal Procedure.

Clause (b) of subsection (3) of section 19 of the Act reads as under:

> “(b) no court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is

> satisfied that such error, omission or irregularity has resulted in a failure of justice.”

The learned advocate with vehemence submitted that the articulation given by clause (b) of subsection (3) of section 19 of the Act that, “no court shall stay the proceedings under this Act .. .. “ is having an over-riding effect over the opening words of subsection (1) of section 19 of the Act that, “No court shall take cognizance of an offence .. ..”.

8. The submission made by the learned advocate on the face of it not acceptable. The Court restrains itself from commenting anything further on the conduct of the learned advocate, because the presumption is that he being an officer of the Court is acting on the instructions of his client.

9. At this juncture, when it was inquired as to who is the officer who has instructed the learned advocate to file this Revision Application, the learned advocate made available papers of earlier proceedings. When this fact is pointed out to the learned advocate, he submitted that he is in possession of papers of earlier proceedings, and not

the papers of the present proceedings.

10. The learned advocate submitted that unanimous recommendation of the Branch for preferring Revision Application against the impugned order dated 15th September 2005 is not available with him. He tendered the bunch of papers for perusal of the Court. When these papers are returned to the learned advocate for perusal, he tendered apology stating that by mistake he has tendered wrong papers to the Court. He submitted that these papers pertain to an order passed by the learned Special Judge on 15th September 2005 in some other case being special case, i.e. 17 of 2003. He submitted that the order passed in that case was challenged before this Court by filing Criminal Revision Application No.30 of 2006. The same was disposed of by this Court, reference of which is found in para 2 of the impugned order.

This is the degree of sincerity with which the learned advocate appearing for CBI is conducting matters before this Court. He does not take pain to see that the papers of the case on hand are handed

over to the Court.

11. Having perused the order passed by the learned Special Judge dated 5th April 2006, this Court finds no reason to interfere with the order. This Court is of the opinion that in view of the binding judgement of the Hon'ble Division Bench of this Court, the learned Special Judge had no option than to pass the order which is under challenge. If at all the petitioner or the learned advocate representing the petitioner felt that the view of the Hon'ble the Division Bench is not correct, the matter should have been taken to a forum, which could have dealt with the judgement and order of the Division Bench which is holding the field ever since 1980. Learned advocate Mr.Ravani could not point out any contrary decision to the aforesaid binding decision of the Division Bench.

In the result this Criminal Revision Application is dismissed.

12. This Court wanted to dismiss the Revision Application awarding cost for having wasted the valuable time of the Court, but the Court again

restrains itself from awarding the cost as it will be paid by the petitioner from public exchequer. Had it been the case of a private litigant, the Court would have awarded exemplary cost while dismissing the Revision Application.

13. This Revision Application was filed beyond period of limitation and Criminal Misc. Application No.9038 of 2006 was filed seeking condonation of delay. That delay was condoned by order dated 10th October 2006. There is no order on record staying the proceedings before the learned Special Judge. Therefore, it is clarified that unless there is an order staying the proceedings before the learned Special Judge, he shall proceed with the matter in accordance with law.

(RAVI R. TRIPATHI, J.)

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